

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 CIAE-00 DODE-00 NSAE-00 NSCE-00

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FM AMEMBASSY MADRID

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AMEMBASSY THE HAGUE

AMEMBASSY BRUSSELS

AMEMBASSY COPENHAGEN

AMEMBASSY LISBON

AMEMBASSY STOCKHOLM

AMEMBASSY OSLO

US MISSION NATO 1024

USEC BRUSSELS

C O N F I D E N T I A L MADRID 5422

E.O.11652: GDS

TAGS: PINT, SP

SUBJECT: REFORM OF THE PENAL CODE

1. THE SUAREZ GOVERNMENT FACES SOMETHING OF A TEST IN THE CORTES TODAY IN THE BILL TO REFORM THE PENAL CODE. THE DRAFTING DIFFICULTIES THAT CAUSED RECOMMITTAL OF THE BILL TO COMMITTEE EARLIER HAVE APPARENTLY BEEN IRONED OUT, THOUGH IN RETROSPECT THE ISSUE OF HOW TO TREAT THE PROBLEM OF LEGALIZATION OF THE COMMUNIST PARTY PLAYED A GREATER ROLE IN THE BILL'S EARLIER DIFFICULTIES THAN WE HAD REPORTED. (MADRID 4527)

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2. THE BILL IS NECESSARY IN ORDER TO ELIMINATE PENAL

CODE PROSCRIPTIONS AGAINST NORMAL POLITICAL
ACTIVITY NOW THAT THE LAWS GOVERNING FREEDOM OF
ASSEMBLY AND POLITICAL PARTIES ARE ON THE BOOKS
(UNTIL THIS BILL IS PASSED UNDER THESE LAWS POLITICAL PARTY
ACTIVITY IS LEGAL. WHILE UNDER THE PENAL CODE IT IS
ILLEGAL).

3 THE BILL ALSO SPECIFIES WHAT IS PROHITTED:
ASSOCIATIONS CONTRARY TO PUBLIC MORALS, THSOE AIMED AT COMMITTING
A CRIME. THOSE AIMED AT VIOLENT SUBVERSION OR DESTRUCTION OF THE
POLITICAL JURIDICAL OR SOCIAL OR ECONOMIC ORDER, OR
THAT ATTACK THE SOVEREIGNNY COMMUNITY, IDEPENDENCE,
TERRITORIAL INTEGRITY OR NATIONAL SECURITY OF THE COUNTRY
AND THOSE THAT PRMOTE DISCRIMINATION ON THE BASIS OF
RACE, RELIGION SEX OR ECONIMIC SITUATION (ARTICL
172 OF THE PENAL CODE). THE ISSUES COMES WITH RESPEDT
TO THE WORDING PROPOSED TO KEEP FOR A TIME AT LEAST
THE COMMUNIST PARTY ILLEGAL. THE LANGUAGE TENTATIVELY
APPROVED AT THE LAST SESSION OF THE CORTES WHEN THE BILL
WAS REMANDED TO COMMITTEE RENDERS ILLEGAL, UNDER ARTICLE 172
"THOSE UNDER INTERNATIONAL
DISCIPLINE THAT PROPOSE TO IMPLANT A TOTALITARIAN SYSTEM"
THE COMMITTEE BROUGH FORWARD THIS PROPOSAL, PLUS AN
ALTERNATIVE BACKED AMONG OTHERS BY MEILAN GIL AND PIO
CABANILLAS WHICH WOULD MAKE ILLEGAL, "THOSE WHICH
BECAUSES OF THEIR OBJECTIVES PROGRAMS, ACTIVITIES
OR CIRCUMSTANCE, ATTACK HUMAN DIGNITY OR FREEDOM
OR LIBERTY, OR ARE AGAIST PLURALISM OF ASSOCIATION
AS A MEAN OF POLITICAL PARTICIAPATION".

4. THE ASSORTED FALANGISTS, TRADITIONALISTS AND
FRANCO REGIME CONSERVATIVES THAT COMPRISE THE CORTES
RIGHT AT THE LAST MOMENT PROPOSED TO THE PRESS YET ANOTHER
FORMULA THAT WOULD DECALRE QTE ILLEGAL IN WHAT EVER
THE CASE. NATIONAL AND INTERNATIONAL COMMUNIST
ASSOCIATIONS UNQTE, CORTES PRESIDENT FERNANDEZ MIRANDA
INDICATED THAT IT WOULD BE OUT OT ORDER AT THIS LATE
DATE TO CONSIDER A PROPOSAL NOT EVEN RAISED IN COMMITTEE,
AND THE MOVE IS SEEN AS A STALKING HORSE TO EXERT
PRESSURE AGAINST APPROVAL OF THE "PLURALIST" ALTERNATIVE
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5. THERE IS SOMETHING ARTICIAL ABOUT ALL OF THIS
IN THE SENSE THAT THERE IS NOT INTENTION TO LEGALIZE THE
COMMUNISTS PARTY AT THIS TIME PARTICULARLY GIVEN
MILITARY ATTITUDES. UNDER EITHER FORMULA A FUTURE GOS.
IF IT DECIDED IT WAS FACTICALLY CONVENIENT, COULD
LEGALIZE THE PARTY. (E.G. THE PCE VOCALLY PROCLAIMS
IT IS NOT TOTALITATIAN NOR UNDER INTERNATIONAL DISCIPLINE

AND RESPECTS PLURALISM.) THUS THE ARGUMENT FROM THE
RIGHT STEMS IN GOOD MEASURE FROM THE IMPLICATION
THAT THEIR LESS THAN WHOLEHEARTED ENDORSEMENT OF POLITICAL
PLURALISM AND DEMOCRACY COULD BECOME A SUBJECT OF
DISCUSSION UNDER THE PLURALIST FORMULA.

6. CONSEQUENTLY, THE PROBLEM COMES NOT FROM THE
IMMEDIATE UTILITY VIS A VIS THE COMMUNIST ISSUE OF EITHER
FORMULA, BUT RATHER IN TERMS OF THE ABILITY OF THE
SUAREZ GOVERNMENT TO ENGINEER THE APPROVAL OF THE FORMULA
IT DEEMS THE MOST ATTRACTIVE. THE SUAREZ GOVT HAS NOT
MADE A PUBLIC STAND, BUT THE NEW JUSTICE MINISTER
LAVILLA WILL SEPAK ON THE BILL TODAY AND WE UNDERSTAND
THAT THE GOS WOULD PREFER THE PLURALIST FORMULA. WHETHER
IT COMMITS ITS PRESTIGE TO THE ISSUE DEPENDS ON
ITS READING OF THE LAY OF THE LAND IN THE CORTES, AND MORE
IMPORTANTLY WHETHER THE MILITARY HAVE EXPRESSED
A FIRM VIEW ON THESE FORMULAS.
IT HAS SIGNIFICANCE IN RESPECT OF THE NEW GOS ABILITY
TO "CARRY OUT YOUR LABORS WITHOUT FEARNZ AS THE KING ENJOINED IN HIS
REMARKS AT THEIR INSTALLATION.
STABLER

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